

### REMARKS

Claims 1, 3 to 11, 13 to 18, 27, and 28 are pending in this application. Applicant has canceled claims 20 to 25 and 29 to 35 without prejudice as directed to a non-elected invention. Applicant has also canceled claims 2, 12, 19, and 26 without prejudice, and has amended claims 1, 9, and 14 to incorporate the subject matter of claims 2, 12, and 19. Claim 3 has been amended to depend from claim 1 and claim 13 has been amended to depend from claim 9. The amendments add no new matter to the present specification.

### Restriction

Applicant affirms the election of Group I, claims 1 to 18 and 26 to 28, without traverse. Applicant has cancelled claims 20 to 25 and 29 to 35 without prejudice in response to the restriction requirement dated May 18, 2004.

### Objections

Claims 2, 12, and 19 have been objected to for an alleged informality. Applicant assumes the Office would find these claims allowable if amended to address this objection because no rejections were applied to these claims. Applicant has canceled claims 2, 12, and 19 and has incorporated that subject matter into claims 1, 9, and 14, respectively. Amended claims 1, 9, and 14 recite the phrase "panB promoter" as suggested in the Office Action. Accordingly, applicant respectfully requests that the present objections be withdrawn and that claims 1, 9, and 14 be allowed.

### Allowable Subject Matter

Applicant acknowledges the Office's finding that claims 3 and 13 would be allowable if rewritten in independent form including all of the limitations of the base and intervening claims. In view of the amendments described above and arguments presented below, the base claims should be allowed, thereby obviating this objection. Accordingly, applicant requests that the objection to the claims be withdrawn.

35 U.S.C. § 112, First Paragraph

Claims 1, 4 to 11, 14 to 18, 27 and 28 have been rejected for an alleged lack of written description because, according to the Office Action (at pages 3 to 4)

“The disclosure is not deemed to be descriptive of the complete structure of a representative number of species encompassed by the claims as one of skill in the art cannot envision all the methods utilizing the encompasses promoters based on the teachings of the specification.”

Applicant respectfully disagrees that the specification lacks an adequate written description to support the originally filed claims. However, in the interest of moving the present application toward allowance, applicant has amended claims 1, 9, and 14. Applicant reserves the right to pursue original claims 1, 9, and 14, in unamended form, in one or more continuation applications.

As noted above, amended claims 1, 9 and 14 incorporate the subject matter of canceled claims 2, 12, and 19, by reciting that the promoter is a “panB promoter.” The specification provides a clear written description of the use of a panB promoter, derived from any bacterium, in the recited methods. For example, the specification throughout indicates that a panB promoter, or other promoter whose activity is upregulated by a tetrahydrofolate biosynthesis inhibitor, can be used in the methods of the present invention (see, e.g., page 2, lines 26 to 28 and page 3, lines 7 to 14) and specifically provides the nucleic acid sequence of a *Bacillus subtilis* panB promoter (at, e.g., page 14, line 22 to page 15, line 3). panB genes from a variety of bacterial genera were known at the time of filing (for one example, see Merkel and Nichols (1996) FEMS Microbiology Letters 143:247-252, referred to in the present specification at page 14, lines 16 to 18, and recited in applicant's Information Disclosure Statement dated February 19, 2002) and, therefore, skilled practitioners would have readily appreciated that any panB promoter could be used in the recited methods based on the teachings of the specification.

For the reasons discussed above, applicant submits that the amended claims comply fully with the written description requirement. Accordingly, applicant requests that the present rejection be reconsidered and withdrawn.

Claim 26 was also rejected for an alleged lack of written description. Applicant has canceled claim 26 without prejudice, thus obviating the present rejection. Accordingly, applicant requests that the present rejection be withdrawn.

Claim 26 was also rejected for an alleged lack of enablement. Applicant has canceled claim 26 without prejudice, thus obviating the present rejection. Accordingly, applicant requests that the present rejection be withdrawn.

35 U.S.C. § 102

Claim 1 has been rejected as allegedly anticipated by Rohlman et al. (J. Bacteriol. 172(12):7200-7210 (1990)). As discussed above, in the interest of moving the present application toward allowance, claim 1 has been amended to recite that the promoter is a "panB promoter." Applicant submits that Rohlman does not anticipate amended claim 1 for the reasons discussed below.

Rohlman describes a study that examines the responses of *Escherichia coli* K-12 strains to treatments, e.g., exposure to trimethoprim, that lead to 5-amino-4-imidazole carboxamide riboside 5'-triphosphate (ZTP) and 5-amino-4-imidazole carboxamide riboside 5'-triphosphate (ZMP) accumulation. Rohlman does not appear to describe or even suggest the panB promoter, that panB promoter activity is increased in the presence of tetrahydrofolate biosynthesis inhibitors, or the use of such a promoter in methods for determining whether a test compound is an inhibitor of bacterial tetrahydrofolate biosynthesis. Accordingly, applicant submits that Rohlman does not anticipate amended claim 1, and respectfully requests that the present rejection be reconsidered and withdrawn.

Claim 26 has been rejected as allegedly anticipated by Tan et al. (EP 0200252). Applicant has canceled claim 26 without prejudice, thus obviating the present rejection. Accordingly, applicant requests that the present rejection be withdrawn.

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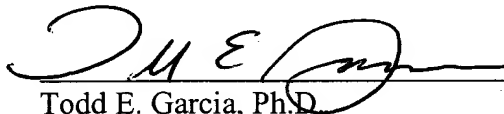
CONCLUSION

Applicant asks that all objections and rejections be withdrawn and that all claims be allowed. Applicant has enclosed a Petition for Extension of Time of One Month along with a check for \$120. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 15132-292001.

Respectfully submitted,

Date: \_\_\_\_\_

6/10/05



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